

Supreme Court, U.S.
FILED

MAY 12 1977

No. 76-1333

MICHAEL ROSEN, JR., CLERK

In the Supreme Court of the United States
OCTOBER TERM, 1976

WILLIAM J. BEER, ET UX., PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT
IN OPPOSITION

LAWRENCE G. WALLACE,
Acting Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The question presented in this federal income tax case is whether the United States and Michigan Constitutions exempt the salary of the petitioner,¹ a state court judge, from the imposition of federal income taxes.

During 1969-1971, petitioner was a Michigan Circuit Court Judge. In his federal income tax returns for those years, petitioner did not include his judicial salary in gross income. He contended that his salary as a Michigan judge is immune from federal income taxation under the United States and Michigan Constitutions. The Commissioner of

¹"Petitioner" refers to William J. Beer. His wife Dora is a party solely because she filed joint returns with petitioner for the years in question.

Internal Revenue determined that petitioner's judicial salary was includable in gross income and accordingly determined deficiencies (Pet. App. A, p. 16). The Tax Court upheld the Commissioner (Pet. App. A, pp. 14-21) and the court of appeals dismissed petitioner's appeal as "frivolous and entirely without merit" (Pet. App. H, p. 36).

Petitioner argues (Pet. 6-9) that Michigan's right to protect its judges against the diminution of their salaries is one of the reserved powers under the Tenth Amendment and that state autonomy in this area is further assured by the constitutional guaranty to the states of "a Republican Form of Government" (Article IV, Section 4). He further contends that the Michigan Constitution prohibits the imposition of federal taxes upon his salary by its provision (Article VI, Section 18) that "Salaries * * * of the circuit judges * * shall not be decreased * * *."

But petitioner's contention ignores the established principle that a state constitution may not interfere with the imposition of federal taxes. *Florida v. Mellon*, 273 U.S. 12, 17; *Gunn v. Dallman*, 171 F. 2d 36, 37 (C.A. 7). While petitioner relies (Pet. 6) upon *Collector v. Day*, 11 Wall. 113, which held that federal taxation of the salary of a state court judge was unconstitutional, that decision was expressly overruled in *Graves v. New York ex rel. O'Keefe*, 306 U.S. 466, 486. Indeed, the Court subsequently indicated that the imposition of income taxes is not a diminution of income in any constitutional sense. *O'Malley v. Woodrough*, 307 U.S. 277, 282.

Petitioner further argues (Pet. 13) that the court of appeals should not have dismissed his arguments as "frivolous" and "entirely without merit." But it is well established that a court of appeals has broad powers to dismiss a civil appeal as frivolous in appropriate cases.

Chambers v. Colonial Pipeline Co., 408 F. 2d 678 (C.A. 6); *Moist v. Belk*, 380 F. 2d 721 (C.A. 6), certiorari denied, 389 U.S. 960; *John v. Gibson*, 270 F. 2d 36 (C.A. 9), certiorari denied, 361 U.S. 970. Since petitioner's position has been rejected by the decisions of this Court, the summary dismissal by the court of appeals was entirely appropriate.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

LAWRENCE G. WALLACE,
Acting Solicitor General.*

MAY 1977.

*The Solicitor General is disqualified in this case.